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MCDERMOTT, WILL & EMERY

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March 4, 2003

VIA ECFS

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

**Re: *Ex Parte* Presentation; In the Matter of Implementation of Section 304 of the
Telecommunications Act of 1996; Commercial Availability of Navigation
Devices; CS Docket No: 97-80**

Dear Ms. Dortch:

On March 4, 2003, the undersigned, on behalf of the Consumer Electronics Retailers Coalition, met with Commissioner Abernathy and Legal Advisor Stacy Robinson; Commissioner Martin and Legal Advisor Catherine Bohigian; Legal Advisor to Commissioner Adelstein Sarah Whitesell; Legal Advisor to Commissioner Copps Alexis Johns; Legal Advisor to Chairman Powell Susan Eid and Thomas Horan of the Media Bureau; and Deputy Chief William Johnson, Mary Beth Murphy, and Steven Broeckaert of the Media Bureau. The undersigned was accompanied, on behalf of CERC, by Miles Circo, CTO of Circuit City Stores, Inc., and Jean Cantrell, Director of Government Affairs, Circuit City Washington office. The CERC representatives were accompanied by Colas Overkott, Executive Vice President Digital TV, and Jason Schouw, Vice President, Americas, of SCM Microsystems, and Jack W. Chaney, a technology consultant to electronics manufacturers.

The purpose of these meetings was (1) to discuss actual cost and firm pricing offers, today and in 2005 and thereafter, for OpenCable POD modules; and (2) to express support for current Commission regulations requiring common reliance on the POD-Host interface by January 1, 2005, and concern over potential negative effects, for consumers and competition, in the event such a requirement would be relaxed.

The matters discussed in these meetings are set forth in the Declarations, filed contemporaneously with this letter, by Mr. Overkott and Mr. Chaney. The Declaration of Mr. Overkott documents several points he made in the meetings: It provides firm price quotations for OpenCable POD modules, effective immediately for delivery starting in 6 - 12 weeks, at prices ranging from \$27 to \$19, depending on volume. It asserts that, especially if Commission regulations re POD reliance are kept in place, these prices should be reduced by

several dollars by the 2005 date. It explains that the cost of the host interface should be no more than \$1 - \$2. It predicts, based on SCM's experience, that reliance on the POD interface will also produce a significant decrease in the price of host devices. The Declaration of Mr. Chaney explains why his prior Declaration in this matter was correct, and why the criticisms of it made in Declarations filed on January 7, 2003, were incorrect. It also asserts that by 2005 POD modules should be available at a producer cost of around \$15.

In answer to questions, Mr. Chaney (a member of the CEA Video Board) and the undersigned said they were not aware of any manner in which the "MOU" of the December 19 CE/Cable "Plug & Play" agreement addresses the 2005 POD reliance date, or of any direct or indirect impact of this agreement on such date, or of any meeting of the minds by those parties on this subject.

This letter, contemporaneously with the Declaration of Colas Overkott and the Declaration of Jack W. Chaney, are being provided to your office in accordance with Section 1.1206 of the Federal Communications Commission rules. A copy of this notice, and of the Declarations, has been delivered to the parties listed below.

Very truly yours,

Robert S. Schwartz

Robert S. Schwartz

cc: Commissioner Abernathy
Commissioner Martin
Susan Eid
Sarah Whitesell
Alexis Johns
Catherine Bohigian
Stacy Robinson
Bill Johnson
Mary Beth Murphy
Steve Broeckaert